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PRELIMINARY COMMENTS ON DARK NUMBERS: RESEARCH ON DOMESTIC VIOLENCE IN CENTRAL AND EASTERN EUROPE

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I. MUSINGS ON METHODOLOGY BY A FOREIGN RESEARCHER

At times, as an American scholar doing research on official responses to domestic violence in Central and Eastern Europe, I have experienced a feeling best described as walking through an intellectual “minefield”. What are the appropriate categories for analysis? How does one avoid, as best one can, the possibility of an insensitive or “imperialistic” response to the phenomena I am studying—thereby reproducing exactly what I am critical of in the work of others? Am I sufficiently well equipped intellectually with an understanding of the culture and the history of the country in order to give a rich context to the phenomena under investigation? Do I fully understand the “law on the books” and the “law in practice” applied to domestic violence both in the family and penal codes? Am I naive in my trust in the accuracy and nuances of a translation? These musings can bedevil the most well intentioned researcher.

Why, then, in the face of such challenges have I undertaken research over the past few years into the theory and practice of handling domestic violence cases by officials and professionals in Poland, Hungary, Russia and Romania? I hope and believe my work is part of a co-operative process which can be characterized as “activist research.” I use this phrase quite deliberately to acknowledge my standpoint in the research process—recognizing the traditional academic notions of objectivity are inaccurate, misplaced and, often, self-serving. In so doing I do not assign my work to a lower rung in the ladder of hierarchy. Rather I recognize my inspiration from and connection to the women's rights activists in the region who are challenging prevailing practices and attitudes regarding domestic violence in their respective countries and to scholars from within and outside the region who can assist the activists' work by providing them some of the necessary documentation and studies.

As an outside scholar I am committed to an intellectual perspective which holds that a more complete understanding of the processes in a legal system in response to allegations of domestic violence must be grounded in an analysis of the actual practices and beliefs of officials and professionals charged with handling such cases. These include: police, prosecutors, judges and lawyers as well as medical and mental health professionals, social workers, clergy, academics and journalists whose work involves contact with domestic violence

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cases. To be more complete this understanding must be embedded in a cultural context which includes: women's roles (especially in the home), women's relationship to the state, citizenship in its gendered dimensions, and the role of law. In applying this intellectual perspective to the region I am following a method for research and teaching purposes on domestic violence which I have used for my work in the U.S.

Why these four countries? It was partly a matter of choice as well as a measure of chance and circumstance. In 1993 I was selected to participate in a faculty exchange program between my university and Jagiellonian University in Krakow. When I came to the part of my sex discrimination in the law syllabus devoted to domestic violence, I was assured repeatedly that such violence existed in America because it is a violent society, but that it did not exist to any significant extent because women were honored and respected, especially as mothers, in Poland. When it did occur, according to my colleagues, friends and students, the violence was confined to families of lesser social standing (peasants or the urban proletariat); it was often "provoked" by women; and, it usually was "mild," consisting of a few disciplinary "slaps," and most women were not troubled by it. Hearing such consistent answers was a virtual deja vu experience for me. It was not so long ago in the United States that I heard similar comments; in fact, there were moments when I felt I could finish the sentence of my Polish students or colleagues. It seemed pointless to argue in generalities and when I discovered that there had been no study on the subject undertaken by a Polish law professor or social scientist, I decided to undertake one which would be intellectually respectable and credible.

My initial fieldwork in Poland during the summer of 1994 and my contacts with women's rights activists in the region convinced me that a comparative analysis of law and policy in several countries in the region would be intellectually challenging and reveal both similarities and differences within a geo-political area long viewed in the West as monolithic. As one of the other two central European countries which had been more "open" during Communist times, Hungary provided a good comparison. To test the theory and practice of law in several more repressive and authoritarian societies in the region, I selected Russia and Romania (assisted by a Fulbright lectureship).

Conducting such research in societies without a well developed empirical research tradition is a daunting undertaking. Recall that political science was not taught during the Communist period; sociology was, in many cases, suspect and the study of law was a highly formalistic undertaking of limited relevance in societies without market economies and the institutions of a liberal democracy. But the blame does not rest with the tenor of social science inquiry between 1945-1990. In Eastern Europe the historical legacy of law is its use as an instrument of repression and social control in the pre WWI empires in the

region (Tsarist, Hapsburg, and Ottoman). Despite some similarities in the immediate post 1945 period, over time differences among the countries nominally identified as the Soviet bloc began to emerge as reflections of prior history and different cultures.

My study clearly had to be an empirical one. But, empirical did not translate methodologically into the use of a survey instrument in countries where its intended purpose might be suspect, where there was no incentive for officials to respond accurately, and where the potential richness of the data lay in the non quantifiable responses of the interviewees to questions they may not have ever previously considered. Rather, empirical meant extended open ended interviews with doctors (especially emergency room physicians and gynecologists), psychologists and psychiatrists, police officers, prosecutors, judges, lawyers, clergy, academics, journalists, social workers and counselors especially in alcohol treatment programs and in any shelters for women and children.

I made a deliberate choice not to interview any targets or perpetrators of the violence. It seemed inappropriate to conduct such interviews through an interpreter, which positioned me as a voyeur on their personal misery and which might fuel fantasies or desires that I could intervene in a particular case. In my work in the U.S., targets of violence have been an important source of information regarding the practices and procedures of officials and professionals. But, in this research project it was my judgment call that the differences in perceptions of my role demanded such parameters and boundaries.

One additional structural dimension of the research consisted of a deliberate insistence to conduct research outside the capital cities—(Warsaw, Budapest, Moscow and Bucharest)—at times to the amazement of my more sophisticated urban elite interviewees who laughed or shook their heads in disbelief when I reported my research schedule to them. In the highly centralized countries of the region, interviewees in these political/administrative/culturally significant locales might be more likely to speak in generalities unless they were local district police, prosecutors and judges. Moreover, their experiences might be significantly different from officials and professionals in provincial cities or in rural areas.

II. WOMEN'S CITIZENSHIP AND STATE ACCOUNTABILITY

For scholars concerned with the development of liberal democratic institutions, the shifting boundaries of the "public" and the "private" spheres of life in a society and their articulation by the law are crucial areas of inquiry and analysis. In traditional legal theory these boundaries are understood to be demarcated by a set of indicators which include: the extent of governmental

regulation over property, the association of religion with the state and the relationship between the apparatus of government and organizations and entities. Traditional scholarship on the relationship between the public and the private sphere was concerned ultimately with questions of opportunity and freedom. It relegated families and their activities to a private sphere protected from state intervention.

Recent feminist legal theory and scholarship, developed largely in the United States, has challenged this traditional analysis by highlighting the actual extent of state regulation in family life and reproduction. These theorists argue that the seemingly benign situating of issues of family life beyond the realm of governmental regulation or intervention may not produce equally beneficial results for all parties involved. For example, the state's failure to intervene in domestic violence situations may encourage further violence by a perpetrator which serves to maintain a family hierarchy based on that violence. It may also serve to diminish the options for a target of the violence. In effect, state inaction is a form of state action which can result in serious harms upon a portion of its citizenry.

Just as direct application of either American or western European liberal theories of the relationship between the public and the private in legal theory and practice may be inappropriate for central and eastern Europe, so too may insistence upon the unmodified applicability of current western feminist legal theory to these societies. The complex and different historical experience of women's citizenship in the region does not dovetail neatly with western feminist experience. Sex and gender are constructed by culture; they are fluid categories marked by continuities and changes over time. Though gender was insufficiently theorized by Marx and Lenin who, like western liberals, privileged the economy as the core of society, under post WWII "socialist" policies public/private boundaries shifted palpably with the provision of social insurance benefits and official non discrimination policies in employment—all of which benefitted women. These policies marked significant discontinuities with the past.

To focus on systemic official and professional responses to domestic violence is to interrogate the complex relationships among gender, law and culture in a society. Though either sex may be the target of domestic violence and abuse, there is widespread consensus that an overwhelming preponderance of such violence is directed at women by men. The gender relations shifts within a culture, which include a normative delineation of the appropriate roles and behaviors for each sex, need charting. In turn, law articulates the privileges associated with the many of these gendered norms and the sanctions for their violation.

Communism was indeed a major force for modernization in all four countries. But modernizing ideologies and practices extract a societal price—indeed, often, a very high one (in the region there was a wholesale moving of populations from villages to new industrial arenas, the collectivization of agriculture and environmental destruction on a massive scale). In all four countries, men, traditionally, were responsible for the well-being and order of the community/commonly identified as the public sphere. Women were responsible for nurture and reproduction in the home/commonly identified as the private sphere. Modernization brought women in the urban areas a double burden; they were homemakers who entered the wage labor force in industry and the service sectors. Despite official pronouncements of equality between the sexes including provisions in the national constitution of each of the four countries and efforts to increase educational and employment opportunities for women, a gendered division of responsibilities remained; women could be and were moved in and out of the wage labor force, depending on economic conditions and national needs.

Family as a “haven from a heartless world,” (in Christopher Lasch’s memorable phrase describing the ideology of American family life as a safe space from the brutal competition of the capitalist market place) had its parallel in Central and Eastern Europe. There, family was viewed as the haven from the heartless regulatory power and surveillance of the State. But such refuge from the State still had its gendered dimension. It did not render families as safe places for women and children. While central and eastern Europe societies share a recent history of marked, heightened consciousness regarding the status of women, by constitutional sex, there are deeply rooted traditional continuities regarding domestic violence which raise significant questions regarding the nature and completeness of the status change for women. Family remained a site for “naturalized” violence—the locus for disciplining women and children.

Here we are confronted with a seeming paradox. The state undertakes policies and programs which implement major discontinuities with women’s prior life experiences and opportunities through educational opportunity and wage labor. Such policies enhance the quality of women’s citizenship. Simultaneously, that very quickly is seriously compromised by the State’s failure to intervene in domestic violence situations.

If this formulation is a persuasive characterization of the recent past, what is to be expected as public/private boundaries shift once again? How will these shifts affect State intervention in domestic violence cases as a legal and public policy issue? Will the powerful continuities with the past continue to prevail?

The theoretical issue of public/private boundary shifts in societies in transition raised by research has, as its proximal dimension, the issue of the role of existing bureaucratic and professional cultures in the implementation of the

law. Historically, societies in the region have a long tradition of the "dead weight" of bureaucracy identified with various empires—Hapsburg, Russian, or Ottoman as well as largely unresponsive and unaccountable Soviet controlled structures. Such legacies pose major concerns regarding the transformative nature of a new commitment to the "rule of law" and its implementation.

There are a number of officials, professionals and experts (such as police, prosecutors, lawyers, judges in criminal court as well as in civil court where divorces are granted, psychologists, social workers and counselors in crises centers) formally responsible for handling domestic abuse and violence cases. Others, including law professors, academics in other relevant fields, and journalists can have a significant impact on public as well as official responsiveness to the issue. Officials, professionals, and experts become gatekeepers. They can prevent or handicap access to any procedures, services or remedies for domestic violence, or be responsive and creature in such cases.

Most of these individuals were trained and appointed in the Soviet period. They internalized the prevailing norms, assumptions and expectations fostered by political, legal and professional systems which rewarded compliance and discouraged innovation. In this respect they are not unlike their professional and bureaucratic counterparts in western democracies. But, unlike them, the system demonstrated no accountability toward citizens.

Now, subsumed beneath the attractive language of "societies in transition" these experts and officials are faced with profound challenges to "business as usual." The laws under which they operate are being reformed; procedures and practices consistent with new laws are being developed; professionals and experts are being retrained and challenged by new standards of procedural fairness and transparency. Whether vigilance will be exercised in implementing these changes for a "non-market" issue such as domestic violence is not clear.

III. PRELIMINARY OBSERVATIONS ON DOMESTIC VIOLENCE IN CENTRAL AND EASTERN EUROPE: STATISTICS AND CAUSAL EXPLANATIONS

A. The Absence of Statistics

In a part of the world where regimes generated enormous mind numbing amounts of statistics for some issues and policies and virtually no data for others, even the accuracy of readily available numbers was suspect. For other issues there were no data. These were the "dark numbers"—a term widely used to refer to phenomena which are known to exist, but for which there is

virtually no public or official recognition or acknowledgement; therefore, no recorded numbers are available to verify its existence.

The term conveys a more ominous, deeper level of reality beneath a glossy or benign appearance. I first encountered the term in almost every Polish interview. It recurred with amazing unsolicited frequency in the interviews in Hungary and Russia as well. In Romania, the term did not usually appear spontaneously, but when I included it as part of a query on issues for which there were no statistics, there was always an immediate nod of recognition though most of these interviewees were unwilling to be more expansive—a posture which, I suspect, is a contemporary reminder of the rigidly authoritarian nature of the Ceausescu regime. In Russia the term “dark numbers” was frequently accompanied by a casual chilling aside “Ah, so you are interested in ‘kitchen cases’” (cases ranging from misdemeanors to femicides or homicides involving married couples or cohabitants). The first time I heard the term I recall my disbelief and asked my interpreter whether she or I had misunderstood the words. She replied “Nyet” with a sad half-smile. By its locus in the realm of the “private”—in what is culturally understood as a “woman’s place” or “world” the term clearly diminishes the significance of these crimes.

Like other countries, there are no official statistics on the frequency or incidence of domestic violence in the four countries. Criminal offense statistics are kept by article of the Penal Code and are not disaggregated on the basis of the relationship of the perpetrator to the victim. Nor are divorce statistics kept in a form which would easily allow a researcher to determine the number of cases in which violence was alleged and proven. Nor do hospital or clinic data identify the cause of a patient’s injuries.

Lacking hard data (which, admittedly, would only cover reported cases), I did ask interviewees to estimate the incidence of the violence and its frequency, while proffering clear reassurances that I understood their response was NOT OFFICIAL. The query appeared to catch most interviewees off guard. Some nervously dodged it—even though they had talked at great length earlier in the interview about the cases they had handled. Others manifested some alarm and said directly that they did not know, although they gratuitously volunteered that someone might have some statistics somewhere. Some rose to the moment and actually seemed energized by my interest in their opinion. And, a very few had incomplete data which were modestly helpful; they agreed that most cases were unreported or not prosecuted. Keeping in mind that interviewees had, in all likelihood, not been asked the question previously, their incidence estimates ranged from 30-40% of all women for Poland, 25-30% for Hungary, 50-75% for Russia and 20-25% for Romania. Frequency posed even more difficulties; most interviewees agreed that domestic violence

was a pattern of behavior rather than a single isolated incident. Some did claim that among the "better" classes, if it occurred even once, a woman would seek a divorce. When asked whether such divorced perpetrators might repeat their behavior with a new partner, some interviewees agreed that it was "possible"—though many hastened to add "only if he were provoked."

Perhaps the most interesting data collection I found was, not surprisingly, a self motivated scientific study done in one community by a Romanian doctor authorized to provide a legis-doctor certificate (which is used as evidence of injury in a criminal or divorce proceeding). Of the 2,000 cases of such certificates issued for 2 of the 3 administrative districts in his community, 381 involved injuries to husband or wife in intra-familial disputes. Only 26 certificates were issued to men; the rest were given to women mostly in the 20-40 age range.

B. Causes of the Violence

Law and public policy do not exist external to cultural, social or economic considerations and forces. Scholars may disagree on interactive specificities. Nevertheless, the relationships among or between these forces and their impact on law and public policy are integral to any analysis.

In the instance of violence within a society—specifically violence which is generated by non-governmental sources and occurs within families—cultural and social practices, beliefs and expectations play an important role. Such violence, if criminalized, may be ignored or explained away by the perceptions as well as the practices of law and policy implementers. In part, the failure to recognize and enforce available sanctions against the violence is connected to the implementers' explicit or implicit presumptions regarding the causes of the violence and, hence, the range of acceptable justifications for its infliction, regardless of the provisions of a legal code.

When asked their opinion about the causes of domestic violence, most interviewees answered rather readily that both alcohol consumption and unemployment among males accounted for the overwhelming majority of the cases. While these explanations were usually proffered in quick succession, alcohol was almost always the first one. Some interviewees in each country focused on the contemporary alarming consumption rates of alcohol; others explained that high rates of alcohol consumption existed prior to the recent transition and that such behavior was deeply embedded in their country's culture and history. In particular, it appeared to be a means for encouraging and cementing male bonding. (In Poland, for example, there are folk sayings about the connection between drinking and male friendships.)

There is some support for the claim that alcohol was viewed as a problem before 1989 in the region—though the primary concern appears to have been the connection between alcohol consumption and the failure to perform work in a satisfactory manner. During the Communist period in all four countries, there were some time limitations on the sale of alcohol; however, its ready availability as a home brew meant that the authorities could not exercise truly meaningful control. Indicative of official recognition of alcoholism, however, were provisions for compulsory treatment for alcoholism (upon the complaint of family members and authorization by a board of medical personnel with the approval of the local party apparatus). Older doctors, prosecutors, and judges reminiscing about the past stated specifically that the procedure provided a respite for women who were beaten and their children. In the next breath, however, they admitted that the treatment did not cure the patient; it was only a matter of time before he lapsed back into his old alcoholic violent ways.

What does this emphasis on alcohol as a cause of the violence reveal? For law enforcement (police, prosecutors and judges) the majority of domestic violence cases they handle involve various levels of injury in which alcohol consumption plays a role or is viewed as the “trigger.” With some few exceptions, officials involved with the criminal law focus on the primacy of this factor because, like other countries, individuals who are caught up in the criminal law system tend to be poor or lower class and may commit visible crimes under the influence of alcohol. In effect, the domestic violence perpetrators are men whom criminal justice personnel know and see—though they readily admit that only in cases of “grave” injuries (felony assaults) in domestic violence cases is it likely that the perpetrator will be arrested.

Police at the neighborhood or district level in all four countries stated that they knew the “problem” families in their jurisdiction. In Russia and Romania police acknowledged the existence of surveillance of neighborhoods. “Problem families,” it turned out, usually were those in which violence against family members (usually women and children) perpetrated by a drunken or alcoholic husband or cohabitant occurred frequently. The choice of term is an interesting one—the entire family is classified as a “problem,” though the actual “problem” is one identifiable member. These interviewees usually added a class based context for the “problem family”—one of “low status” or “limited education” where “self control” and “proper family behavior” would be absent. Thus, the social location of the violence was served to distance official and professional interviewees from it.

Police reported that they might be called by neighbors who over heard a “family quarrel” or that a woman and her children might be thrown out of their house by her drunken husband or partner and appear at the police station seeking help to return home. Some police described the behavior of repeatedly

beaten women in terms reminiscent of "battered women's syndrome" or "post traumatic stress" syndrome as though they were unaware of these clinical categories.

Many interviewees also added high rates of unemployment caused by the transition to a "market" economy as a cause of the violence and often, though not always, separated it from alcohol as a "trigger" for the violence. There is no doubt that the transition in each country has produced a level of unemployment previously unknown during the past fifty years—especially since unemployment was a crime and underemployment was a means of job and benefits distribution. In rural areas (especially in Russia and Romania) interviewees connected the violence with the collapse of collective agricultural production and ensuing rural enmiseration. In all four countries unemployment in cities and towns as plants have closed down or, in the cases of Silesia or Northern Russia and the Urals as miners have been declared redundant or not paid their salaries (all situations in which virtually no social assistance or retraining is available) were also cited by interviewees.

Unemployment, like the consumption of alcohol, has a "gendered dimension;" men and women may not respond in the same culturally accepted ways. In the interviews a further probe from me on the concrete connection of unemployment to domestic violence probably appeared to some interviewees as a naive question—one which only an American immunized from such economic difficulties could ask. In fact, the answers added the "gendered dimension" to their initial more general response that unemployment was a cause of domestic violence. Unemployment for men previously guaranteed employment, no matter how poor the material conditions, by the State results in their loss of status and attendant "privileges" as the "breadwinner." Unemployment for men leads to frustration manifested by anger or withdrawal; one response is to drink inexpensive, readily available alcohol; the other, not always connected with alcohol, is to abuse vulnerable family members, particularly wives and children.

On the other hand, unemployed women, largely manipulated as a reserve wage labor force depending on the historical period and economic conditions as well as the prevailing nationalist ideology combined with pro-natalist policies present a more complicated picture. Women's wage labor work did not produce a situation of greater equality in the home. New research on women in central and eastern Europe during Communist times underscores women's double shift (waged work and major responsibilities for domestic work) or, more accurately, their triple shift (adding reproduction to the list). To the extent that women are the first to be forced out of the wage labor market during the "transition to a market economy," their response does not appear to be a turning to family violence and alcohol—though, in Russia which has the

highest proportion of women in the wage labor force, concern was expressed about the number of unemployed often divorced women "even with children" as interviewees underscored who are becoming alcoholics. Some interviewees suggested that women are more resigned to such "manipulation," or that they are more able to adapt by relying on their primary role of "mother" with its deep cultural significance especially in the rhetoric of nationalism.

Reliance on the answers proffered by officials in the criminal law system produces one set of explanations for the causes of domestic violence. But, when one turns to other professionals who handle cases involving domestic violence, another set of explanations begins to emerge more clearly and openly. Lawyers who handle divorces, psychologists (a relatively new profession in the region) and some medical personnel speak about their female clients abused and beaten often for a period of years in relationships not marked by alcoholism. What explanations for the violence do these professionals give? Many of them speak in concrete terms with specific examples about the violence as part of what scholars characterize as "the social relations of gender." These social relations include culturally endorsed and legitimated gender based power structures in marriage in which violence may be used for control or power.

Social relations of gender and gender hierarchy may be identified as "tradition;" in some instances they may be connected to deeply held religious beliefs about the role of women and men in family life; they may be considered "natural," based on biological interpreted through the lens of constructed social roles. In each of the four countries, the social relationship sealed by marriage within families is interpreted to mean entitlement of a husband to a wife's domestic, nurturant and sexual services performed in a culturally acceptable manner. From her husband's perspective, a wife's perceived "failure" to provide these services can be or is a form of "provocation"—a challenge to his power, authority, sexuality and, ultimately, to his status. One can characterize "provocation" as an empty or floating category—dependent for its content on cultural context and the dimensions of power within a family. His response *in his family* is his prerogative and, in many cases, it is likely to be a form of punishment such as threats, psychological abuse, or physical violence. To the extent that roles in gender social relations are viewed as "natural," the violence that may accompany them as sanction is "naturalized." There is a cruelly ironic "victim blaming" aspect to the complaints of some prosecutors and judges who have handled felony assault or femicide/homicide cases occurring in situations with a history of abuse when they criticize the women for women *seem to accept* the violence without resorting to the law for protection.

Lawyers whose clients are seeking a divorce and some of the relatively few psychologists in all four countries state that their clients do not have a history of reporting the violence (whether chronic or acute) to the police or

pressing their case through the criminal law system. Judges who hear divorce cases confirmed this response. All agreed that a woman from "a good family" would be unlikely to rely on the criminal law authorities which would bring scandal upon her family. Among such families it is considered a mark of failure to rely upon the directness of the criminal legal system. Rather it is deemed more acceptable to use the family law system for a divorce, although the ease with which it is obtained varies from country to country; in Russia it is a relatively simple procedure; in Poland, on the other hand, it is a source of tension between the state (which is under some public pressure to liberalize the procedure) and the Catholic Church whose influence can be seen in the long, painful process of moralistic scrutiny by the courts in many divorces.

In each country, however, the overwhelming majority of individuals who file for a divorce are women. (This comports with the experience of women in many other countries where family law reform, particularly divorce reform, is a key issue for women's human rights). In all four countries lawyers, when asked about the grounds for filing for divorce, responded that the major and most frequent complaint was abuse and violence inflicted by a husband. Such an allegation requires proof from witnesses and a medical certificate from a doctor and, for legal purposes in Romania for example, an additional examination and certificate from a legis/doctor whose specialty is forensic medicine.

In Poland and Hungary and to a lesser extent in Romania, interviewees expressed concerns that women "use" allegations of abuse and violence to get divorces, especially if there is any possibility of evicting a husband from the flat. The clear import of such comments is that some women misrepresent and embroider their claims. The situation might not be as "bad" as the woman represented, though "yes, there might have been some violence," interviewees acknowledged. Such comments reflect what I have characterized earlier as the "naturalization of violence."

IV. CLOSING MUSINGS

Time and space in this presentation do not allow me to discuss my specific research findings for each country—especially the responses of other officials and professionals. Suffice it to say that market economies do not repair the injuries of gender systems. While the new economic structures may redefine the nature of citizenship for both women and men, they do not necessarily eradicate the gender systems which maintain basic social structures.

This immediate post-communist period has been characterized by the enmiseration of large numbers of people, the clear re-emergence of class stratification, the resurgence of nationalism, and the development of a corpus

of international human rights which, though a powerful vehicle for dissidents during the communist period, tends to ignore women's international human rights. Questions of domestic violence and state accountability for enforcing existing laws or enacting ones to punish the violence raise destabilizing possibilities in the volatile situation of transition.